

Remarks

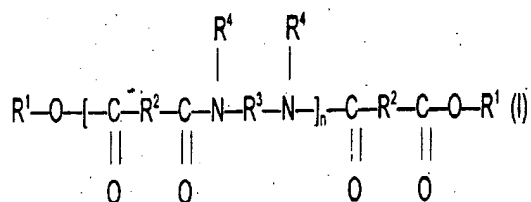
I. Status of the Claims

Claims 1-103 are canceled herein without prejudice. Claims 104-119 have been added and are the only pending claims.

Support for new claims 104-119 can be found in the application as originally filed. For the Examiner's convenience, Applicants point out in the following Table 1, the specific written description support in the specification for the elements of claims 104-119.

Table 1.

<u>Element</u>	<u>Support in Specification</u>
A method of making a mascara composition	See page 24, fourth full paragraph which generally describes manufacturing compositions according to the present invention. The disclosure as a whole reasonably conveys how to make a mascara.
Mixing	See page 24, fourth full paragraph which discloses manufacturing of the cosmetic compositions of the invention by mixing.
At least one solid substance having a melting point of about 45°C or greater	See pages 16-18 under the heading "Solid Substance with a Melting Point of about 45°C or Greater."
At least one polymer chosen from polymers of following formula (I):	See page 10, beginning at line 3.



in which n denotes a number of amide units, such that the number of ester groups represents from 10% to 50% of the total number of ester and amide groups; R¹ is, in each case, independently an alkyl or alkenyl group having at least 4 carbon atoms; R² independently represents, in each case, a C₄ to C₄₂ hydrocarbonaceous group, provided that 50% of the R² groups represent a C₃₀ to C₄₂ hydrocarbonaceous group; R³ independently represents, in each case, an organic group provided with at least 2 carbon atoms, with hydrogen atoms and optionally with one or more oxygen or nitrogen atoms; and R⁴ independently represents, in each case, a hydrogen atom, a C₁ to C₁₀ alkyl group or a direct bond to R³ or another R⁴, so that the nitrogen atom to which both R³ and R⁴ are bonded forms part of a heterocyclic structure defined by R⁴-N-R³, with at least 50% of the R⁴ groups representing a hydrogen atom

Water

See the paragraph bridging pages 4 and 5, which recites that the inventive compositions may be in the form of an emulsion (such as an oil-in-water or water-in-oil emulsion) or a multiple emulsion (such as an oil-in-water-in-oil emulsion or a water-in-oil-in-water). See also the paragraph bridging pages 22 and 23, which specifically states that the inventive composition may contain water.

At least one coloring agent

See the paragraph bridging pages 22 and 23 which recites that

	coloring agents may be added. See also page 23, the final full paragraph, which describes the coloring agents that may be used.
At least one preservative	See the paragraph bridging pages 22 and 23 reciting that the inventive compositions may further comprise at least one suitable additive, such as preserving agents
Ethylenediamine/stearyl dimer tallate copolymer	See the paragraph bridging pages 11 and 12 of the specification reciting Uniclear polymers and that Uniclear polymers are "mixtures of copolymers derived from monomers of (i) C ₃₆ diacids and (ii) ethylenediamine." See also <u>International Cosmetic Ingredient Dictionary and Handbook</u> ("CTFA") page 606 (attached herewith as Exhibit 1), reciting that ethylenediamine/stearyl dimer tallate copolymer is at least one copolymer of ethylenediamine and tall oil dimer acid monomers, end-blocked with stearyl alcohol and further reciting that a trade name for ethylenediamine/stearyl dimer tallate copolymer is Uniclear. Thus, the specification reasonably conveys the use of at least one ethylenediamine/stearyl dimer tallate copolymer to make a mascara.
At least one volatile oil	See page 21, second full paragraph and the paragraph bridging pages 21 and 22, which disclose that the composition may contain at least one volatile oil.
Isododecane	See page 21, first full paragraph particularly mentioning the use of isododecane as a volatile oil.
At least one neutralizing agent	See the paragraph bridging pages

	22 and 23 reciting that the inventive compositions may further comprise neutralizing agents.
A liquid fatty phase structured by at least one polymer	See page 1, first paragraph.

Notably, while the claims as originally filed included a proviso indicating that the at least one solid substance having a melting point of about 45°C or greater is not stearylalkonium hectorite, silica, talc or paraffin wax, that proviso, although applying to the broad "composition" claims, was not intended to apply to the various embodiments, unless so specified. In this regard the Examiner's attention is directed to pages 2 and 3 of the instant specification which describe various embodiments of the invention. As can be seen from, for example, the first embodiment described on page 2 and the third embodiment described on page 2, the scope of the proviso is different depending upon the embodiment. In the first embodiment on page 2, the proviso includes stearylalkonium hectorite, silica, talc and paraffin wax, while the third embodiment on page 2 provides out only stearylalkonium hectorite. Further, see, for example, the embodiment that bridges pages 2 and 3 of the specification, which contains no proviso limiting the scope of the solid substance having a melting point of about 45°C or greater. Thus, Applicants position is that the specification reasonably conveys that the full scope of solid substance having a melting point of about 45°C or greater as defined in the present specification would be appropriate for use in the present invention for the embodiments presently claimed.

For at least these reasons, it is believed that the claims presented are consistent with the written description requirement of 35 U.S.C. § 112, first paragraph.

The Title and Abstract have been amended to more accurately describe the presently claimed invention. Support for the new Title and Abstract can be found throughout the application as originally filed, and as discussed above. Accordingly, no new matter has been added.

II. U.S. Patent Nos. 5,783,657 to Pavlin et al, 6,242,509 to Berger et al. and Bush Boake Allen

As referenced in the Information Disclosure Statement filed herewith, Applicants are aware of U.S. Patent Nos. 5,783,657 to Pavlin et al., 6,242,509 to Berger et al. and the Technical Services Bulletin of Bush Boake Allen. While these references are prior work of the supplier of one of the polyamide polymers for use in the present invention, Applicants do not believe that any of these references, taken alone or in combination, teaches or suggests the invention as presently claimed.

III. U.S. Patent No. 6,497,861 to Wang et al.

As referenced in the Information Disclosure Statement filed herewith, Applicants are aware of U.S. Patent No. 6,497,861 to Wang et al. ("Wang"), filed on June 21, 2001. However, Applicants do not believe that this patent is prior art with respect to the present application. In this regard, Applicants point out that the instant application is a continuation of Application Serial No. 10/182,830 which is an entry into the national phase of PCT Application WO 02/47608, which has an international filing date of

December 12, 2001 and a priority claim to PCT/US00/33596 dated December 12, 2000.

For the Examiner's convenience, Applicants point out in the following Table 2, the specific written description support from the priority document PCT/US00/33956 filed December 12, 2000, for the elements of claims 104-119.

Table 2.

<u>Element</u>	<u>Support in Specification of PCT/US00/33596</u>
A method of making a mascara composition	See page 28, first full paragraph which generally describes manufacturing compositions according to the present invention. The disclosure as a whole reasonably conveys how to make a mascara.
Mixing	See page 28, first full paragraph which disclosed manufacturing of the cosmetic compositions of the invention by mixing.
At least one solid substance having a melting point of about 45°C or greater	See pages 19-21, under the heading "Solid Substance with a Melting Point of about 45°C or Greater."
At least one polymer chosen from polymers of following formula (I): $ \begin{array}{ccccccc} & & R^4 & & R^4 & & \\ & & & & & & \\ R^1-O- & [& -C- & R^2- & C- & N- & R^3- & N- &]_n & -C- & R^2- & C- & O- & R^1 & (I) \\ & & & & & & & & & & & & & & \\ & & O & & O & & & & & & O & & O & & \end{array} $ in which n denotes a number of amide units, such that the number of ester groups represents from 10% to 50% of the total number of ester and	See pages 11 and 12, beginning with the bridging paragraph.

amide groups; R ¹ is, in each case, independently an alkyl or alkenyl group having at least 4 carbon atoms; R ² independently represents, in each case, a C ₄ to C ₄₂ hydrocarbonaceous group, provided that 50% of the R ² groups represent a C ₃₀ to C ₄₂ hydrocarbonaceous group; R ³ independently represents, in each case, an organic group provided with at least 2 carbon atoms, with hydrogen atoms and optionally with one or more oxygen or nitrogen atoms; and R ⁴ independently represents, in each case, a hydrogen atom, a C ₁ to C ₁₀ alkyl group or a direct bond to R ³ or another R ⁴ , so that the nitrogen atom to which both R ³ and R ⁴ are bonded forms part of a heterocyclic structure defined by R ⁴ -N-R ³ , with at least 50% of the R ⁴ groups representing a hydrogen atom	
Water	See the paragraph bridging pages 5 and 6, which recites that the inventive compositions may be in the form of an emulsion (such as an oil-in-water or water-in-oil emulsion) or a multiple emulsion (such as an oil-in-water-in-oil emulsion or a water-in-oil-in-water). See also the paragraph bridging pages 25 and 26.
At least one coloring agent	See the second full paragraph on page 26 which recites that coloring agents may be added. See also the paragraph bridging pages 26 and 27, which describes the coloring agents that may be used.
At least one preservative	See the second full paragraph on page 26 reciting that the inventive compositions may further comprise at least one suitable additive, such as preserving agents.
Ethylenediamine/stearyl dimer tallate copolymer	See the first full paragraph on page 14 reciting Uniclear polymers and that Uniclear polymers are "mixtures of

	<p>copolymers derived from monomers of (i) C₃₆ diacids and (ii) ethylenediamine." See also <u>International Cosmetic Ingredient Dictionary and Handbook</u> ("CTFA") page 606 (attached herewith as Exhibit 1), reciting that ethylenediamine/stearyl dimer tallate copolymer is at least one copolymer of ethylenediamine and tall oil dimer acid monomers, end-blocked with stearyl alcohol and further reciting that a trade name for ethylenediamine/stearyl dimer tallate copolymer is Uniclear. Thus, the specification reasonably conveys the use of at least one ethylenediamine/stearyl dimer tallate copolymer to make a mascara.</p>
At least one volatile oil	See the first full paragraph on page 25, which discloses that the composition may contain at least one volatile oil.
Isododecane	See page 24, first full paragraph particularly mentioning the use of isododecane as a volatile oil.
At least one neutralizing agent	See the second full paragraph on page 26 reciting that the inventive compositions may further comprise neutralizing agents.
A liquid fatty phase structured by at least one polymer	See page 1, first paragraph.

As can be seen from Table 2, claims 104-119 have full 35 U.S.C. § 112, first paragraph, support in this international application priority document and hence are entitled to date benefit of the December 12, 2000, priority document. This antedates Wang.

Furthermore, Applicants do not believe that the claims presented herein define the same patentable invention as any of those of Wang et al. Hence, Applicants do not

believe that there is any interfering subject matter between the present claims and those of Wang et al.

IV. Patentability over Copending Applications and Patents Issued Therefrom Cited in Information Disclosure Statements

For the Examiner's convenience, Applicants identify in Table 3 below all 36 of the related copending applications, including the instant application, as well as those listed on the PTO Forms 1449 filed herewith, including filing date, assignment, and inventor information. This should assist the Examiner in assessing any possible issues under statutory double patenting. The assignment information is included because it relates to issues of terminal disclaimer and potential 35 U.S.C. §§ 102(e)/103 issues discussed below.

Table 3

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication Date
05725.0594-00000	09/733,899	December 12, 2000	Mohamed KANJI, Carl ORR, and Carlos O. PINZON	COSMETIC COMPOSITIONS CONTAINING AT LEAST ONE HETERO POLYMER AND AT LEAST ONE FILM-FORMING SILICONE RESIN AND METHODS OF USING	Reel 011723, Frame 0503, on April 20, 2001	U.S. Published Application No. US 2002/011477 3 A1 Dated: August 22, 2002
05725.0595-00000	09/733,900	December 12, 2000	Carlos O. PINZON and Paul THAU	COSMETIC COMPOSITIONS CONTAINING HETEROPOLYMERS AND OIL-SOLUBLE	Reel 011639, Frame 0897, on March 23, 2001	U.S. Published Application No. US 2002/012278 1 A1

Application No. Unassigned
Attorney Docket No. 05725.0795-02

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication Date
				CATIONIC SURFACTANTS AND METHODS OF USING SAME		(Republished US 2003/008212 6A9 on May 1, 2003) Dated: September 5, 2002
05725.0656-00000	09/618,066	July 17, 2000	Véronique FERRARI and Pascal SIMON	COMPOSITIONS IN RIGID FORM STRUCTURED WITH A POLYMER	Reel 011057, Frame 0676, on September 11, 2000	N/A: Will not publish
05725.0656-01000	09/685,577	October 11, 2000	Véronique FERRARI and Pascal SIMON	COMPOSITIONS IN RIGID FORM STRUCTURED WITH A POLYMER	Reel 011455, Frame 0203, on January 22, 2001	N/A: Will not publish
05725.0659-00000	09/618,032, issued on June 11, 2002, as U.S. Patent No. 6,402,408	July 17, 2000	Véronique FERRARI	COMPOSITION CONTAINING A LIQUID FATTY PHASE GELLED WITH A POLYAMIDE CONTAINING ESTER END GROUPS	Reel 011057, Frame 0007, on September 12, 2000	U.S. Patent No. 6,402,408 Dated: June 11, 2002
05725.0659-01000	09/685,578	October 11, 2000	Véronique FERRARI	COMPOSITION CONTAINING A LIQUID FATTY PHASE GELLED WITH A POLYAMIDE CONTAINING ESTER END GROUPS	Reel 011549, Frame 0914, on February 20, 2001	N/A: Will not publish
05725.0795-01000	10/182,830	August 2, 2002 371 (c) Date: January 21, 2003	Roberto CAVA-ZZUTI, Véronique FERRARI, Brian MATTOX, Carlos O. PINZON, and Paul THAU	USE OF POLYAMIDE POLYMER IN A MASCARA COMPOSITION COMPRISING AT LEAST ONE SOLID SUBSTANCE HAVING A MELTING POINT OF 45°C OR	Reel 014040, Frame 0345, on May 7, 2003	U.S. Published Application No. 2003/014783 7 A1 Dated: August 7, 2003

**Application No. Unassigned
Attorney Docket No. 05725.0795-02**

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication, Date
				GREATER		
05725.0795-02000	Not yet assigned	February 27, 2004	Roberto CAVA-ZZUTI, Véronique FERRARI, Brian MATTOX, Carlos O. PINZON, and Paul THAU	METHOD OF MAKING A MASCARA COMPOSITION COMPRISING POLYAMIDE POLYMER AND AT LEAST ONE SOLID SUBSTANCE HAVING A MELTING POINT OF 45°C OR GREATER	Reel 014040, Frame 0345, on May 7, 2003	Not yet published
05725.0806-00000	09/733,896	December 12, 2000	Carlos O. PINZON and Paul THAU	COMPOSITIONS CONTAINING HETEROPOLYMERS AND OIL-SOLUBLE POLYMERS AND METHODS OF USING SAME	Reel 011765, Frame 0183, on April 26, 2001	U.S. Published Application No. US 2002/012003 6 A1 (Republished US 2003/012542 7 A9 on July 3, 2003) Dated: August 29, 2002
05725.0808-00000	09/733,898	December 12, 2000	Carlos O. PINZON, Paul THAU, and Isabelle BARA	COMPOSITIONS CONTAINING HETEROPOLYMERS AND OIL-SOLUBLE ESTERS AND METHODS OF USING SAME	Reel 011654, Frame 0869, on April 2, 2001	U.S. Published Application No. US 2002/010731 4 A1 Dated: August 8, 2002
05725.0809-00000	09/733,897	December 12, 2000	Carlos O. PINZON and Paul THAU	COMPOSITIONS CONTAINING HETEROPOLYMERS AND METHODS OF USING SAME	Reel 011646, Frame 0966, on April 4, 2001	U.S. Published Application No. US 2002/011133 0 A1 Dated: August 15, 2002
05725.	10/203,018	August 5,	Véronique	USE OF	Reel 014055,	U.S.

Application No. Unassigned
Attorney Docket No. 05725.0795-02

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication, Date
0816-01000		2002 371 (c) Date: March 24, 2003	FERRARI, Richard KOLODZIEJ, Carlos O. PINZON, and Paul THAU	POLYAMIDE POLYMER IN A MASCARA COMPOSITION COMPRISING AT LEAST ONE INERT FILLER	Frame 0428, on March 24, 2003	Published Application No. US 2003/016184 8 A1 Dated: August 28, 2003
05725.0816-02000	Not yet assigned	February 27, 2004	Véronique FERRARI, Richard KOLODZIEJ, Carlos O. PINZON, and Paul THAU	METHOD OF MAKING A MASCARA COMPOSITION COMPRISING A POLYAMIDE POLYMER AND AT LEAST ONE INERT FILLER	Reel 014055, Frame 0428, on March 24, 2003	Not yet published
05725.0817-01000	10/203,254	August 7, 2002 371 (c) Date: December 20, 2002	Véronique FERRARI, Carlos O. PINZON, and Paul THAU	COSMETIC COMPOSITIONS CONTAINING AT LEAST ONE HETEROPOLYMER AND AT LEAST ONE GELLING AGENT AND METHODS OF USING THE SAME	Reel 013607, Frame 0258, on December 20, 2002	U.S. Published Application No. US 2003/018578 0 A1 Dated: October 2, 2003
05725.0819-01000	10/129,377	May 3, 2002 371 (c) Date: October 16, 2002	Véronique FERRARI	COMPOSITION STRUCTURED WITH A POLYMER CONTAINING A HETEROATOM AND AN ORGANOCELL-ATOR	Filed October 16, 2002. Not yet recorded.	Not yet published
05725.0832-00000	09/749,036	December 28, 2000	Véronique FERRARI and Véronique JACQUES	COMPOSITION COMPRISING AT LEAST ONE HETERO POLYMER AND AT LEAST ONE PASTY FATTY SUBSTANCE AND METHODS FOR USE	Reel 011723, Frame 0518, on April 20, 2001	U.S. Published Application No. US 2001/003128 0 A1 Dated: October 18, 2001

Application No. Unassigned
Attorney Docket No. 05725.0795-02

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication Date
05725.0895-00000	09/971,028	October 5, 2001	Mohamed KANJI	METHODS OF USE AND OF MAKING A MASCARA COMPRISING AT LEAST ONE COLORING AGENT AND AT LEAST ONE HETEROPOLYMER	Reel 012411, Frame 0820, on December 28, 2001	U.S. Published Application No. US 2003/008688 3 A1 Dated: May 8, 2003
05725.0895-01000	10/413,217	April 15, 2003	Mohamed KANJI	METHODS OF USE AND OF MAKING A MASCARA COMPRISING AT LEAST ONE COLORING AGENT AND AT LEAST ONE POLYAMIDE POLYMER CHOSEN FROM ETHYLENEDIAMINE/STEARYL DIMER TALLATE COPOLYMER	Reel 012411, Frame 0820, on December 28, 2001	U.S. Published Application No. US 2003/019861 3 A1 Dated: October 23, 2003
05725.0895-02000	10/699,780	November 4, 2003	Sue FENG and Mohamed KANJI	METHODS OF DISPERSING AT LEAST ONE COLORING AGENT USING AT LEAST ONE HETEROPOLYMER	Reel 012411, Frame 0820, on December 28, 2001	Not yet published
05725.0896-00000	10/198,931	July 22, 2002	Mohamed KANJI	COMPOSITIONS COMPRISING AT LEAST ONE HETEROPOLYMER AND FIBERS, AND METHODS OF USING THE SAME	Reel 013410, Frame 0044, on October 21, 2002	U.S. Published Application No. US 2004/001362 5 A1 Dated: January 22, 2004
05725.0920-00000	09/899,909, issued on August 13, 2002 as U.S.	July 9, 2001	Isabelle BARA	TRANSPARENT SCENTED SOLID COSMETIC	Reel 012278, Frame 0077, on October 23, 2001	U.S. Patent No. 6,432,391 Dated:

Application No. Unassigned
Attorney Docket No. 05725.0795-02

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication Date
	Patent No. 6,432,391			COMPOSITION		August 13, 2002
05725.0932-00000	09/937,314	September 24, 2001 371 (c) Date: December 6, 2001	Véronique FERRARI	A TRANSFER-FREE MASCARA COMPOSITION COMPRISING AT LEAST ONE VOLATILE SOLVENT AND AT LEAST ONE POLYMER	Reel 012476, Frame 0507, on January 17, 2002	Not yet published
05725.1003-00000	10/012,029	December 11, 2001	Nathalie COLLIN	COSMETIC COMPOSITION COMPRISING A POLYMER BLEND	Reel 013142, Frame 0645, on August 1, 2002	U.S. Published Application No. US 2003/001276 4 A1 Dated: January 16, 2003
05725.1004-00000	10/012,051	December 11, 2001	Nathalie COLLIN	USE OF AT LEAST ONE POLYAMIDE POLYMER IN A MASCARA FOR RAPIDLY INCREASING THE AMOUNT OF MAKE-UP DEPOSITED ON EYELASHES	Reel 012847, Frame 0285, on April 30, 2002	U.S. Published Application No. US 2002/018903 0 A1 Dated: December 19, 2002
05725.1005-00000	10/012,052	December 11, 2001	Nathalie COLLIN	COSMETIC COMPOSITION CONTAINING A WAX AND A POLYMER	Reel 012847, Frame 0264, on April 30, 2002	U.S. Published Application No. US 2002/016833 5 A1 Dated: November 14, 2002
05725.1018-00000	10/046,568	January 16, 2002	Xavier BLIN, Véronique FERRARI, and Frédéric	NAIL POLISH COMPOSITION COMPRISING A POLYMER	Reel 013109, Frame 0731, on July 18, 2002	U.S. Published Application No. US 2002/019216 8 A1

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Attorney Docket No. 05725.0795-02

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication, Date
			AUGUSTE			Dated: December 19, 2002
05725.1020-00000	10/047,987	January 17, 2002	Véronique FERRARI	COSMETIC COMPOSITION COMPRISING A POLYMER AND A FLUORO OIL	Reel 012910, Frame 0028, on May 17, 2002	U.S. Published Application No. US 2002/017269 6 A1 Dated: November 21, 2002
05725.1187-00000	10/312,083	December 23, 2002 371 (c) Date: March 26, 2003	Patricia LEMANN	COSMETIC COMPOSITION COMPRISING AN EMULSION CONTAINING A LIQUID FATTY PHASE STRUCTURED WITH A POLYMER, AND AN ALKYLENE-OXIDE-CONTAINING EMULSION STABILIZER	Reel 014039, Frame 0976, on March 26, 2003	U.S. Published Application No. US 2003/016180 7 A1 Dated: August 28, 2003
05725.1198-00000	10/450,108	June 11, 2003 371 (c) Date: June 11, 2003	Nathalie COLLIN	COSMETIC COMPOSITION COMPRISING A POLYMER AND FIBERS	Not yet filed/recorded	U.S. Published Application No. US 2004/002863 6 A1 Dated: February 12, 2004
05725.1228-00000	10/466,166	July 14, 2003 371 (c) Date: January 20, 2004	Nathalie COLLIN	COSMETIC COMPOSITION COMPRISING A MIXTURE OF POLYMERS	Filed January 20, 2004. Not yet recorded.	Not yet published
05725.1336-00000	10/459,636	June 12, 2003	Shao Xiang LU and Mohamed KANJI	COSMETIC EMULSIONS CONTAINING AT LEAST ONE HETERO	Filed October 3, 2003; not yet recorded	Not yet published

Application No. Unassigned
Attorney Docket No. 05725.0795-02

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication Date
				POLYMER AND A SUNSCREEN AND METHODS OF USING SAME		
05725.1337-00000	10/618,315	July 11, 2003	Shao Xiang LU, Terry VAN LIEW, and Nathalie GEFFROY-HYLAND	COSMETIC COMPOSITIONS COMPRISING A STRUCTURING AGENT, SILICONE POWDER AND SWELLING AGENT	Filed August 12, 2003 and January 30, 2004; not yet recorded	Not yet published
05725.1338-01000	10/746,612	December 22, 2003	Shao Xiang LU, Terry VAN LIEW, Nathalie GEFFROY-HYLAND, and Mohamed KANJI	COSMETIC COMPOSITIONS COMPRISING A STRUCTURING AGENT, SILICONE POWDER AND SWELLING AGENT	Not yet filed/recorded	Not yet published
05725.1338-02000	10/747,412	December 22, 2003	Shao Xiang LU and Mohamed KANJI	COSMETIC EMULSIONS CONTAINING AT LEAST ONE HETERO POLYMER AND AT LEAST ONE SUNSCREEN AND METHODS FOR USING THE SAME	Not yet filed/recorded	Not yet published
06028.0018-00000	10/203,375	August 9, 2002 371 (c) Date: August 9, 2002	Nathalie JAGER-LEZER and Jean-Christophe SIMON	COLOURED TRANSPARENT OR TRANSLUCENT COSMETIC COMPOSITION	Reel 013318, Frame 0962, on August 9, 2002	U.S. Published Application No. US 2003/002677 2 A1 Dated: February 6, 2003
06028.0019-00000	10/203,374	August 9, 2002 371 (c) Date:	Jean-Christophe SIMON and Nathalie	METHOD FOR MAKING A COLOURED MAKE-UP COSMETIC	Reel 013321, Frame 0001, on August 9, 2002	U.S. Published Application No. US 2003/004436

Attorney Docket No.	U.S. Patent Application No.	U.S. Filing Date/ 371 (c) Date	Inventors	Title	Assignment Recorded (Reel, Frame, Date)	Publication, Date
		August 9, 2002	JAGER-LEZER	COMPOSITION WITH CONTROLLED TRANSMITTANCE		7 A1 Dated: March 6, 2003

A. Copending Applications and Patents

Applicants have considered whether any potential issues arise under 35 U.S.C.

§ 102(e)/§ 103 regarding copending, related applications and patents.

35 U.S.C. § 102(e) states that

[a] person is entitled to a patent unless (e) the invention was described in - (1) an application for patent, published under § 122(b), **by another** filed in the United States before the invention by the application for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or (2) a patent granted on an application for patent **by another** filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing date of an international application filed under the treaty defined in section 351(a)

See 35 U.S.C. § 102(e) (emphasis added).

Applicants have identified the related copending applications and patents above in Table 3 that were filed prior to December 12, 2000, the effective U.S. filing date of the present application based on the priority document of the international patent application. Applicants do not believe that any of the identified copending U.S. Patent Applications or any relevant publications thereof or relevant PCT publications of a

counterpart thereof, describe or suggest the subject matter of claims 104-119 of the present application under 35 U.S.C. § 102(e) and/or § 103.

Also listed in Table 3 is the publication information (U.S. Published Applications and/or U.S. Patents), if any, which correspond to these copending applications and their dates of publication. Moreover, Applicants have provided for the Examiner's convenience the available assignment information in Table 3 or confirmed the obligation of assignment with the assignee, demonstrating that none of these applications, patents, or publications is available as § 102(e)/§ 103 prior art against claims 104-119. See 35 U.S.C. § 103(c). Applicants assert that all of the applications listed above that were filed prior to the instant application's priority date were commonly owned by the Assignee at the time the instant invention was made, which instant invention was also subject to assignment to the Assignee.

For the Examiner's convenience, Applicants submit herewith copies of the pending claims in each of the copending applications and patents listed in Table 3. See Claims at Exhibit 2. Applicants do not believe that any issue with respect to statutory double patenting under 35 U.S.C. § 101 is present with respect to claims 104-119 of the instant application and the claims of any other copending application or patent listed in Table 3.

B. Terminal Disclaimer

Further, solely to expedite prosecution of the instant application, Applicants also submit herewith a Terminal Disclaimer. This Terminal Disclaimer evidences no admission and raises no presumption or estoppel. See M.P.E.P. § 804.02 (quoting Quad Environmental Technologies Corp. v. Union Sanitary District, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1992) for the propositions that "the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection"). The Terminal Disclaimer is effective and is filed to eliminate the possibility of such a rejection or a rejection based any of the enumerated files, *i.e.*, to obviate a double patenting rejection, as stated in the language of the terminal disclaimer.

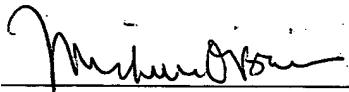
V. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request consideration of the application, and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any fee due in connection with this Amendment to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON,
FARABOW, GARRETT & DUNNER, L.L.P.

By: 
Michelle E. O'Brien
Reg. No. 46,203

Dated: February 27, 2004

Attachments:

Exhibit 1 - International Cosmetic Ingredient Dictionary and Handbook ("CTFA") page 606

Exhibit 2 - Pending Claims in Copending Applications